

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Request for Review of the

Decision of the

Universal Service Administrator by

Washington County Educational Service Center
Marietta, Ohio

Federal-State Joint Board on
Universal Service

Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.

File No. SLD-232665

CC Docket No. 96-45✓

CC Docket No. 97-21

ORDER

Adopted: January 14, 2003

Released: January 15, 2003

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Washington County Educational Service Center (Washington County), Marietta, Ohio.¹ Washington County seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Washington County's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we deny Washington County's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on July 23, 2001, denying Washington County's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD denied Washington County's request for discounts for telecommunications services. Funding Request Number (FRN) 644625.⁴ On August 17, 2001, Washington County filed an appeal of SLD's decision, explaining that it was

¹ Letter from Janine C. Satterfield, Washington County Educational Service Center, to Federal Communications Commission, filed March 4, 2002 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Janine C. Satterfield, Washington County Educational Service Center, dated July 23, 2001 (Funding Commitment Decision Letter).

⁴ *Id.*

denied because it lacked a Technology Plan for its telecommunications service and enclosing a copy of the same.' On August 31, 2001, SLD issued an Administrator's Decision on Appeal, indicating that it would not consider Washington County's appeal because it was received more than 30 days after the July 23, 2001 Funding Commitment Decision Letter was issued.⁶ Washington County subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued before August 13, 2001 under section 54.720(b) of the Commission's rules, an appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed. Documents are considered to be filed with the Commission or SLD only upon receipt.⁸ The 30-day deadline contained in section 54.720(b) of the Commission's rules applies to all such requests for review filed by a party affected by a decision issued by the Administrator.⁹ Because Washington County failed to file an appeal of the July 23, 2001 Funding Commitment Decision Letter within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Washington County's appeal to SLD as untimely and deny the instant Request for Review.

4. To the extent that Washington County is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules, we deny that request as well.¹⁰ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹¹ Washington County has not shown good cause for the untimely filing of its initial appeal. Washington County explains that it mailed its initial appeal on August 17, 2001 by certified mail and received assurances from the U.S. Postal Service that overnight delivery would not be necessary to meet the August 22, 2001 deadline as normal delivery within the continental U.S. is three days. Washington County states that its appeal was received by SLD on August 25, 2001, three days after the 30-day appeal period had passed.¹²

² Letter from Janine C. Satterfield, Washington County Educational Service Center, to Schools and Libraries Division, Universal Service Administrative Company, filed August 27, 2001 (Request for Administrator Review).

⁶ Letters from Schools and Libraries Division, Universal Service Administrative Company, to Janine C. Satterfield, Washington County Educational Service Center, dated August 31, 2001 (Administrator's Decision on Appeal).

⁴ 47 C.F.R. § 54.720(b)

⁸ 47 C.F.R. § 1.7.

⁹ We note that, due to recent disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. December 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. December 28, 2001 and January 4, 2002). Because the July 23, 2001 Funding Commitment Decision Letter was issued before August 13, 2001, the extended appeal period does not apply to Washington County.

¹⁰ See 47 C.F.R. § 54.720(b).

¹¹ See 47 C.F.R. § 1.3.

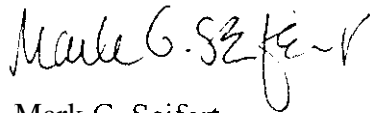
¹² Request for Review.

5. We conclude that Washington County has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹³ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits. The July 23, 2001 Funding Commitment Decision Letter clearly states that "your appeal must be ... RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) ... WITHIN 30 DAYS OF THE ... DATE ON [THE FUNDING COMMITMENT DECISION LETTER]."

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the burden of adhering strictly to its filing deadlines." In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf. Here, Washington County fails to present good cause as to why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Washington County Educational Service Center, Marietta, Ohio on March 4, 2002, and the request to waive the 30-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁴ Funding Commitment Decision Letter at 2.

¹⁵ *See Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Conn. Car. Bur. rel. Nov. 24, 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").